

ALERT MEMORANDUM

Southern District of New York Holds that PDVSA's 2020 Bonds are Valid Under Venezuelan Law

September 26, 2025

On September 18, 2025, the U.S. District Court for the Southern District of New York—on remand from the United States Court of Appeals for the Second Circuit—issued its opinion and order in *Petróleos de Venezuela S.A. v. MUFG Union Bank, N.A.*,¹ a case in which Petroléos de Venezuela (“PDVSA”) sought invalidation of certain bonds it issued that matured in 2020 and are secured by a 50.1% equity pledge in Citgo Holding, Inc. (the “2020 Bonds”). Judge Katherine Polk Failla held (1) that PDVSA’s 2020 Bonds were validly issued under Venezuelan law, and (2) that the act of state doctrine, which bars U.S. courts from invalidating the official acts of foreign sovereigns, does not apply to resolutions by the National Assembly that PDVSA argued had the effect of invalidating the 2020 Bonds. Although it is anticipated that PDVSA will seek to appeal and stay this decision, Judge Failla’s opinion offers new insight into how New York courts are analyzing the validity of foreign-issued debt.

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¹ *Petróleos de Venezuela S.A. v. MUFG Union Bank, N.A.*, No. 19 CIV. 10023, 2025 WL 2675871 (S.D.N.Y. Sept. 18, 2025) (“S.D.N.Y. Op.”).

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PDVSA's Exchange Offer and Default

In September 2016, PDVSA offered bondholders the chance to exchange bonds which were set to mature in 2017 for bonds which had a 2020 maturity date and were secured by 50.1% of the shares of Citgo Holding (the "2020 Bonds").² The pledge of Citgo Holding shares was made through PDVSA's wholly-owned subsidiary PDV Holding ("PDVH"), a Delaware corporation that, in turn, owns Citgo Holding. MUFG Union Bank, N.A. ("MUFG") and GLAS Americas, LLC ("GLAS") served as trustee and collateral agent for the 2020 Bonds.³ The 2020 Bonds, the Indenture, and Pledge Agreement (together, the "Governing Documents") all contain New York choice-of-law provisions.⁴ Shortly after the exchange offer was announced, the Venezuelan National Assembly, led by opposition leader Juan Guaidó, passed a resolution categorically rejecting the issuance of the 2020 Bonds.⁵

In January 2019, the National Assembly declared Maduro's presidency to be illegitimate and named Juan Guaidó, National Assembly President, as Interim President of Venezuela. Guaidó's government was recognized as the legitimate government of Venezuela by the United States, and, in February 2019, Guaidó appointed a competing ad hoc board for PDVSA. In October 2019, the National Assembly issued another resolution stating that the 2020 Bond indenture was a "national public contract" and was not properly authorized by the National Assembly, in accordance with Article 150 of the Venezuelan Constitution.⁶ Article 150 of the Venezuelan Constitution requires National Assembly authorization for "contracts of national public interest," but does not otherwise define the term. Later that month, PDVSA defaulted on the

2020 Bonds by failing to make a scheduled interest and amortization payment.⁷

Procedural Background

On October 29, 2019, the Guaidó-appointed ad hoc board for PDVSA filed a complaint against MUFG and GLAS in the U.S. District Court for the Southern District of New York ("S.D.N.Y.") seeking a declaration that the agreements governing the 2020 Bonds were invalid and void *ab initio* because the requirements of Article 150 had not been complied with. PDVSA also sought injunctive relief to prevent MUFG and GLAS from enforcing the terms of those agreements.⁸ MUFG and GLAS counterclaimed, seeking a declaration that the 2020 Bonds were valid and enforceable, as well as damages for breach of contract, breach of warranty, unjust enrichment, and quantum meruit.⁹

On October 16, 2020, on summary judgment, Judge Failla ruled in favor of MUFG and GLAS, finding the 2020 Bonds valid and enforceable and issuing a judgment in favor of MUFG/GLAS for \$1.9 billion in missed principal and interest payments.¹⁰ In determining that the bonds were valid, Judge Failla applied only New York law, rejecting PDVSA's argument that New York's choice of law rules required her to consider Venezuela law, in particular Article 150 of the Venezuela Constitution, to determine whether the 2020 PDVSA Bonds were validly issued.¹¹ Judge Failla further held that the "act of state doctrine," which generally precludes U.S. courts from reviewing or questioning the validity of actions by foreign sovereign states that are done within that sovereign's territory, did not apply because the resolutions of the National Assembly would have an effect *outside* the Republic of Venezuela ("the Republic"). Specifically, giving effect

² *Id.* at *7–8.

³ *Id.* at *8.

⁴ *Petróleos de Venezuela S.A. v. MUFG Union Bank, N.A.*, 41 N.Y.3d 462, 469 (N.Y. 2024).

⁵ S.D.N.Y. Op. at *8–9.

⁶ *Id.* at *10.

⁷ *Id.* at *10–11. For a full summary of the background of the 2020 Bonds, see *New York Court of Appeals Holds that Venezuelan Law Governs the Validity of PDVSA's 2020 Bonds* (Feb. 27, 2024)

<https://www.clearygottlieb.com/news-and-insights/publication-listing/new-york-court-of-appeals-holds-that-venezuelan-law-governs-the-validity-of-pdvsas-2020-bonds>.

⁸ See *Petróleos de Venezuela S.A. v. MUFG Union Bank, N.A.*, 495 F. Supp. 3d 257, 267 (S.D.N.Y. 2020).

⁹ *Id.*

¹⁰ *Id.* at 293.

¹¹ *Id.* at 283–91.

to the National Assembly's resolutions would amount to a taking by depriving bondholders, including bondholders outside of the Republic, of the value of the Bonds without compensation. Therefore, the court was not required to apply the act of state doctrine to the resolutions.¹²

PDVSA appealed the judgment to the Second Circuit Court of Appeals. Addressing the choice of law question, the Second Circuit determined that there was not enough guidance from New York state courts on whether New York law requires courts to consider the law of the issuer (here, Venezuelan law) to determine whether foreign-issued securities were validly issued. The Second Circuit certified this choice of law question to the New York Court of Appeals.¹³

On February 20, 2024, in a unanimous ruling, the N.Y. Court of Appeals held that New York law "requires courts to consider if the 2020 Notes were issued with defects going to their validity under Article 150 and other related provisions of Venezuela's Constitution."¹⁴ Following the N.Y. Court of Appeals' decision, the Second Circuit remanded the case to S.D.N.Y. for further consideration.¹⁵

On remand, Judge Failla ordered the parties to brief (i) whether the issuance of the 2020 Bonds and the Governing Documents were valid under Venezuelan law; (ii) the role of the act of state doctrine in the proceedings; and (iii) any relevant factual or legal developments since her previous decision in September 2020.¹⁶ The Republic, still represented by the US-recognized leadership of the 2015 National Assembly,

also moved for leave to file an *amicus curiae* brief, which the Court granted.¹⁷

The S.D.N.Y. Decision: Venezuelan Law

On September 18, 2025, Judge Failla held that the 2020 Bonds and associated Governing Documents were validly issued under Venezuelan law.¹⁸ Specifically, the Court found that the agreements governing the 2020 Bonds were not contracts of national public interest, and therefore did not require National Assembly approval.¹⁹

A key point of dispute between the parties was the interpretation and significance of the Venezuelan Constitutional Chamber's decision in *Andrés Velásquez*, which held that only contracts to which the Republic was party qualify as "national public interest contracts."²⁰ The Trustee for the 2020 Bonds argued that *Andrés Velásquez* precluded any argument that the 2020 Bonds issued by PDVSA were national public interest contracts, because *Andrés Velásquez* was a binding interpretation of Article 150.²¹ PDVSA, on the other hand, argued that (1) *Andrés Velásquez* was not binding under Venezuelan law;²² (2) *Andrés Velásquez* did not preclude contracts involving PDVSA from qualifying as national public interest contracts, because PDVSA is part of Venezuela's "decentralized public administration";²³ and (3) other decisions by the Venezuelan Constitutional Chamber postdating *Andrés Velásquez* suggest that contracts to which the Republic is not a party may still qualify as national public interest contracts.²⁴

The Court rejected all of PDVSA's arguments, holding that (1) *Andrés Velásquez* establishes binding precedent

¹² *Id.* at 270–83.

¹³ See *Petróleos de Venezuela S.A. v. MUFG Union Bank, N.A.*, 51 F.4th 456, 474–76 (2d Cir. 2022) (certifying choice-of-law questions to the N.Y. Court of Appeals).

¹⁴ *Petróleos de Venezuela S.A. v. MUFG Union Bank, N.A.*, 41 N.Y.3d 462, 482 (N.Y. 2024).

¹⁵ See *Petróleos De Venezuela S.A. v. MUFG Union Bank, N.A.*, 106 F.4th 263 (2d Cir. 2024) (vacating the judgment of the district court and remanding for further consideration).

¹⁶ Memo Endorsement Accepting Parties' Joint Proposal on Supplemental Briefing, *Petróleos de Venezuela S.A. v. MUFG Union Bank, N.A.*, No. 19 CIV. 10023 (KPF) (S.D.N.Y. Aug. 20, 2024), ECF No. 320.

¹⁷ Order Granting the Bolivarian Republic of Venezuela's Motion for Leave to File Amicus Curiae Brief, *Petróleos de Venezuela S.A. v. MUFG Union Bank, N.A.*, No. 19 CIV. 10023 (KPF) (S.D.N.Y. Jan. 16, 2025), ECF No. 327.

¹⁸ S.D.N.Y. Op. at *27.

¹⁹ *Id.* at *35.

²⁰ *Id.* at *36 (citing Venezuela Constitutional Chamber, Decision No. 2241 of September 24, 2002 (*Andrés Velásquez et al.*)).

²¹ *Id.* at *42.

²² *Id.* at *29.

²³ *Id.* at *38–41.

²⁴ See *id.* at *51, 53, 56–58.

under Venezuelan law;²⁵ (2) contracts made by entities in the decentralized public administration (such as PDVSA) cannot be national public interest contracts;²⁶ and (3) no case postdating *Andrés Velásquez* changes that conclusion.²⁷ The Court further held that, because a “‘necessary ingredient,’ the participation of the Republic itself, is missing” from the contracts at hand, the Governing Documents are not “national public interest contracts” and did not require National Assembly approval. Accordingly, the 2020 Bonds and the Governing Documents were validly issued without National Assembly approval under Venezuelan law.²⁸

The Court also considered the Republic’s views, as outlined in its *amicus curiae* brief, that the 2020 Bonds and the Governing Documents are national public interest contracts and, because they were not approved by the National Assembly, are void *ab initio* and unenforceable under Venezuelan law. The Court noted that, while it affords substantial weight and respectful consideration to the Republic’s views, the Republic’s arguments did not persuade the Court to deviate from its analysis of Venezuelan law.²⁹

The S.D.N.Y. Decision: Act of State Doctrine

The Court next reaffirmed its prior conclusion that the act of state doctrine does not apply.³⁰ The act of state doctrine generally requires a court to treat as “valid” any official acts of a foreign sovereign.³¹ The act of state doctrine does not apply, however, to official acts that effect takings of property outside the territory of the sovereign.³² Instead, acts of foreign governments purporting to have extraterritorial effect should be recognized by U.S. courts only if they are consistent with the law and policy of the United States.³³

PDVSA argued that the resolutions by the National Assembly were official acts that had the effect of rendering the 2020 Bonds void *ab initio*.³⁴ Judge Failla rejected this argument, concluding that (1) these official acts resulted in extraterritorial takings (rendering the act of state doctrine inapplicable) and (2) the Resolutions did not invalidate the 2020 Bonds *ex ante*.³⁵

Reviewing the record and new submissions on the act of state doctrine, Judge Failla remained unpersuaded that the doctrine applied, finding that, because the only purported invalidation occurred after the 2020 Bonds were already in circulation in New York, any taking effected by National Assembly resolution was “extraterritorial” in that it could not be effectively accomplished exclusively within the territory of Venezuela. Thus, the National Assembly’s resolutions were not subject to the act of state doctrine and did not impact the validity of the issuance of the 2020 Bonds.³⁶

Impact of the S.D.N.Y. Decision on the PDVH Sale

The S.D.N.Y. decision is not the last word on the matter. Leadership at Citgo Petroleum has indicated that an appeal of Judge Failla’s decision is likely.³⁷

The S.D.N.Y. decision has already impacted enforcement actions brought by other creditors of the Republic and PDVSA. In the U.S. District Court in the District of Delaware, an auction process is currently underway for the sale of PDVH, the parent entity of Citgo Petroleum and Citgo Holding, to satisfy judgments against the Republic and PDVSA (the “PDVH Sale”).³⁸ The PDVH Sale process is nearing completion, with Judge Leonard Stark expected to approve a winning bid in the coming weeks. The S.D.N.Y. decision in favor of the 2020 Bondholders will

²⁵ *Id.* at *28–34.

²⁶ *Id.* at *42–51.

²⁷ *See id.* at *41–58.

²⁸ *Id.* at *66.

²⁹ *Id.* at *59, *61–63.

³⁰ *Id.* at *67.

³¹ *Id.* at *68.

³² *Id.* at *69.

³³ *Id.* at *70.

³⁴ *Id.* at *2.

³⁵ *Id.* at *71.

³⁶ *Id.* at *79–86.

³⁷ Luc Cohen and Marianna Parraga, *Judge Declares Venezuelan Bonds Valid, Creditors Press for Citgo Auction Resolution*, REUTERS (Sept. 18, 2025), <https://www.reuters.com/world/us-judge-declares-venezuelan-oil-company-pdvsas-2020-bonds-valid-2025-09-18/>.

³⁸ *See Crystallex Int’l Corp. v. Bolivarian Republic of Venez.*, No. 17-mc-151 (D. Del.).

presumably bolster one of the two competing bids, the Elliott/Amber Energy bid, which includes a settlement with the 2020 Bondholders valued at \$2.125 billion.³⁹ This settlement is a discount to the approximately \$2.85 billion judgment that Judge Failla is anticipated to enter in favor of the 2020 Bondholders.

In contrast, the ruling increases the closing risk of the alternate Gold Reserve/Dalinar bid, which does not include a settlement with the 2020 Bondholders and which the 2020 Bondholders have threatened to move to enjoin if the bid were to prevail over the Elliott bid. Last week's ruling increases the likelihood that Judge Stark will approve the Elliott bid, which has the support of the Special Master and the PDVH creditors who are senior to Gold Reserve. On September 19, Judge Stark granted the Special Master's request to terminate the Share Purchase Agreement ("SPA") executed with Gold Reserve and to instead execute an SPA with Elliott.⁴⁰ Judge Stark further denied Gold Reserve's competing motion to strike the Special Master's recommendation of the Elliott bid.⁴¹ Judge Stark has directed parties to the PDVH Sale hearing to file further briefing setting out their positions on the effect of Judge Failla's ruling, among other issues, over the coming weeks.

Implications for Other Foreign-Issued Securities

Going forward, the S.D.N.Y. decision serves as a guide for the scope of review required in assessing the validity of foreign-issued securities with New York choice-of-law provisions. Even under the N.Y. Court of Appeals' decision that local law—in this case, Venezuelan law—

governs the question of validity absent an express adoption of New York law on that issue, Judge Failla's decision demonstrates that the court's application of local law is still a complex exercise depending on local law and its clarity.

The S.D.N.Y. decision illustrates this approach in detail. The Court's analysis of the Republic's *amicus curiae* brief is particularly notable—although the Court ultimately did not find the Republic's brief to be persuasive, it still dedicated substantial analysis to the Republic's interpretation of Venezuelan law. Nevertheless, the Court ultimately credited the Trustee's interpretation of Venezuelan law over the arguments advanced by PDVSA and the Republic itself.

As noted in our February 2024 alert memo,⁴² investors remain well advised to give careful consideration to potential validity issues with foreign-issued debt at the outset, including by seeking robust legal opinions regarding such risks. The S.D.N.Y. decision, however, reaffirms the low probability that a validity challenge will be successful, even where the uncertainties of foreign law are involved. Investors can also take comfort from last year's decision by the N.Y. Court of Appeals, which reaffirmed that New York law governs the *consequences* of any invalidity, including a potential safe harbor for a good-faith purchaser for value without notice of the defect.⁴³

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³⁹ Letter to Judge Leonard P. Stark from Jennifer L. Cree regarding Sale Hearing Schedule, *Crystallex Int'l Corp. v. Bolivarian Republic of Venez.*, No. 17-mc-151 (D. Del. Aug. 12, 2025), ECF No. 2025.

⁴⁰ Notice of Special Master's Termination of Dalinar Stock Purchase Agreement and Execution of Amber Stock Purchase Agreement, *Crystallex Int'l Corp. v. Bolivarian Republic of Venez.*, No. 17-mc-151 (D. Del. Sept. 19, 2025), ECF No. 2319.

⁴¹ Oral Order by Judge Stark, *Crystallex Int'l Corp. v. Bolivarian Republic of Venez.*, No. 17-mc-151 (D. Del. Sept. 19, 2025), ECF No. 2317.

⁴² *New York Court of Appeals Holds that Venezuelan Law Governs the Validity of PDVSA's 2020 Bonds* (Feb. 27, 2024) <https://www.clearygottlieb.com/news-and-insights/publication-listing/new-york-court-of-appeals-holds-that-venezuelan-law-governs-the-validity-of-pdvsas-2020-bonds>.

⁴³ See *id.*; see also *Petróleos de Venezuela S.A. v. MUFG Union Bank, N.A.*, 41 N.Y.3d 462, 482 (N.Y. 2024) (holding that the term "validity" within the meaning of UCC § 8-110(a)(1) "requires courts to consider if the 2020 Notes were issued with defects going to their validity under Article 150 and other related provisions of Venezuela's Constitution").